

Decision 03-04-026 April 3, 2003

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company for an Expedited Order Confirming that PG&E may Enter into an Agreement for Installation, Maintenance and Use of a Removable Floating Boat Dock on PG&E Property Under General Order 69-C or, in the Alternative, for Approval under Public Utilities Code Section 851.

Application 02-04-007  
(Filed April 8, 2002)

**OPINION GRANTING PETITION FOR MODIFICATION**

**Background**

In Decision (D.) 02-10-047, we approved Pacific Gas and Electric Company's (PG&E) Application to enter into the proposed floating dock agreement ("the Agreement"). The Agreement allows a lakeside property owner to install, maintain and use a removable floating dock on PG&E property at Lake Almanor, in exchange for a small annual fee. Paragraph 6 of the Agreement entitled "Prior Rights and Obligations" contains the following language:

"By entering into this Agreement, neither Party waives, amends or alters any of his, her or its legal rights or obligations that exist as of the date of execution of this Agreement, including but not limited to, any rights or obligations that exist by virtue of agreements or conveyances between the Red River Lumber Company and Pacific Gas and Electric Company or Great Western Power Company, or by virtue of any claim by APO [Adjacent Property Owner] to maintain facilities below the 4,500 foot elevation contour (PG&E Datum), or by virtue of General Order No. 69C of the CPUC or Order No. 313 issued by the FERCF on December 27, 1965 (34 FPC 1546, 1549-50.) All of



such rights and obligations (whether enumerated or not above) are collectively referred to herein as the Parties' 'Prior Rights and Obligations.' In any legal proceeding brought to identify, declare, enforce or interpret any Prior Right of Obligation, the nature and scope of the Prior Right or Obligation shall be determined entirely without regard to this Agreement. This Agreement shall not be construed to be a license or a permit, or to convey to APO any easement rights in PG&E's property."

Because we did not believe that this language adequately informed the adjacent property owner of PG&E's right to cancel the Agreement at will, we required PG&E to include in the Agreement language explicitly reserving that right. Although this decision conditioned the grant of the relief requested on modification of the underlying agreement and therefore required mailing for the 30-day comment and review period, pursuant to Pub. Util. Code § 311(g), through an inadvertent error the draft decision was not mailed in time for PG&E's comments to be reviewed by us before we voted out the decision.<sup>1</sup>

PG&E then filed a timely petition for modification of the decision, asking that we remove the rewrite requirement. Concurrently with the petition, PG&E also filed a motion requesting a stay of the filing requirements set forth in Ordering Paragraph 2 of D.02-10-047. The Commission's Executive Director has granted 30-day extensions of the filing requirement via letters to the Applicant sent on December 24, 2002, January 23, 2003, and February 26, 2003, respectively.

---

<sup>1</sup> PG&E's comments were filed on October 23, 2002; we voted out the decision on October 24, 2002.

## **Discussion**

In its petition for modification, PG&E explains the history of the transaction. Lake Almanor is part of a PG&E-owned hydroelectric project acquired from Great West Power Company ("Great Western") in 1935. PG&E owns all of the lake bottom and shoreline up to the 4,500-foot elevation level. There are currently about 1,000 lakefront properties surrounding the lake, owned by individual owners and located above the 4,500-foot elevation level. PG&E believes that the owners of these properties need to enter into agreements with PG&E to use the lake and, specifically, to construct floating docks in the lake. However, from approximately the mid-1970's through 1996, the property owners were reluctant to do so because they believed that Great Western had reserved a use easement for lakeside property owners in its 1935 deed to PG&E. Accordingly, the property owners were unwilling to enter into agreements that appeared to deny or diminish their right of access to the lake.

During 1997 and 1998, PG&E and various groups representing the lakeside property owners engaged in lengthy negotiations including multiple public meetings aimed at resolving this problem. These negotiations were encouraged by the offices of both California Senators and at times included staff of the Federal Energy Regulatory Commission and U.S. Representative Wallace Herger. The negotiations resulted in a standard form of floating dock agreement, to which the agreement attached to the original application in this matter conformed. In that standard agreement, the various parties reserved their legal rights. Specifically, PG&E reserved its rights under General Order 69-C, in the language that we found ambiguous in D.02-10-047 and ordered clarified.

The petition for modification contains a declaration of Juan M. Jayo, in-house counsel to PG&E, setting forth a narrative of the transaction's history;

copies of the form of floating dock agreement and the 1935 deed from Great Western; and related documents and correspondence. Based on a review of this

material, we confirm our original finding that although the language in Paragraph 6 of the Agreement quoted above may be technically sufficient to preserve the right of PG&E to terminate the transaction at will, in and of itself it does not provide meaningful notice to the adjacent property owner of that possibility. However, the unique history of political involvement, extensive public hearings and the lengthy negotiations that produced the form of Agreement indicate to us that there is widespread awareness of the revocation issue, notwithstanding the somewhat obscure and formalistic language of Paragraph 6. Taken together with the considerable disruption of settled expectations that would ensue were we to continue to require the language of the Agreement to be modified, we find that we can grant the petition for modification based on the unique circumstances of this case.

We also take this occasion to note that had PG&E made sufficient disclosure of the history of this transaction in its initial application, the resulting misunderstanding and delay could have been avoided.

### **Comments on Draft Decision**

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to § 311(g)(2) of the Public Utilities Code, the otherwise applicable 30-day period for public review and comment is being waived.

### **Assignment of Proceeding**

Carl W. Wood is the Assigned Commissioner and Karl J. Bemmesderfer is the assigned Administrative Law Judge in this proceeding.

### **Findings of Fact**

1. The language of the Agreement is the product of a compromise between PG&E and lakeside property owners at Lake Almanor.
2. The compromise was arrived at after a lengthy process in which all potentially affected members of the public had an opportunity to participate and make their views known.
3. Approximately 600 similar agreements have been executed containing language identical to that in the Agreement.
4. Requiring PG&E to rewrite the language of the Agreement would impose a significant burden on PG&E and would not provide measurable additional benefits to the public.

### **Conclusion of Law**

The Agreement adequately discloses the possibility of revocation either by PG&E or pursuant to an order of the Commission.

## **O R D E R**

### **IT IS ORDERED** that:

1. The Petition for Modification of Decision (D.) 02-10-047 as filed by Pacific Gas and Electric Company is hereby granted to the extent set forth in Appendix A of this order.

2. D.02-10-047 is hereby modified to incorporate the revisions to the text, as set forth in Appendix A of this order. Deletions are shown with strikeouts and additions are shown with underlinings.

This order is effective today.

Dated April 3, 2003, at San Francisco, California.

MICHAEL R. PEEVEY  
President

CARL W. WOOD  
LORETTA M. LYNCH  
GEOFFREY F. BROWN  
SUSAN P. KENNEDY  
Commissioners



## APPENDIX A

### Page 1

#### Adopted Modification to Decision 02-10-047

The following modifications to D.02-10-047 are hereby adopted:

1. The following paragraph is deleted in its entirety:

#### Revocability

~~The proposed agreement between the property owners (“APO”) and PG&E contains the following language regarding revocability in its Paragraph 5 (A):~~

~~“If the CPUC orders this Agreement to be terminated or modified pursuant to Commission General Order No. 69-C, then this Agreement shall be terminated and APO’s and PG&E’s right and obligations regarding APO’s facilities shall be determined entirely without regard to this Agreement.”~~

~~In addition the agreement provides that PG&E may terminate the agreement based on a material breach of its terms or if the Federal Energy Regulatory Commission determines that the use creates a nuisance or is otherwise incompatible with the overall project recreational use (Paragraph 9.) Although PG&E indicates in the text of its application that it reserves the right to also terminate the agreement at will if it determines it is in the interest of its patrons and consumers to do so, we do not find this exact reservation in the agreement itself. We believe that this express reservation must additionally be contained in the agreement itself to sufficiently capture the specific provisions and general intent of General Order 69-C. For that reason we condition the granting of this order on PG&E amending the agreement to include a provision which allows PG&E to terminate the agreement at will if it determines that it is in the interest of its patrons and consumers to do so. PG&E is directed to submit a~~

**APPENDIX A**

**Page 2**

~~supplemental compliance filing in this docket containing this amended agreement within 30 days of this order. Other floating boat dock agreements of this nature with other Lake Almanor property owners should be similarly amended to fully comply with General Order 69-C.~~

2. Findings of Fact are amended as shown:

1. The proposed agreement is for “limited use” consistent with General Order 69-C.
2. The proposed agreement will not interfere with PG&E’s operations, practices, or provision of services to its customers.
3. ~~As amended,~~ The proposed agreement is revocable as required by General Order 69-C.

3. Conclusions of Law are amended as shown:

1. ~~If modified as required herein,~~ The proposed Agreement is authorized by General Order 69-C.

**(END OF APPENDIX A)**